

**REMARKS**

Claims 1, 3-8, 10 and 11 are pending in the application. Claim 12 is currently withdrawn.

**Claim Rejections Under 35 U.S.C. §103**

Claims 1, 2-8 and 10 are rejected under 35 U.S.C 103(a) as being unpatentable over Graham et al. (US Patent 2,635,906), in view of Herbenar (US Patent 3,128,110), and further in view of Maughan (US Patent 5,564,853).

Graham et al. discloses an all-metal bearing construction wherein a metal moveable member 12 having a head end portion 12a is seated in a metal lower bearing 11c and trapped there against an annular metal upper bearing 13. The annular metal upper bearing 13 and head end portion 12a are in direct metal-to-metal sliding contact, however the annular metal upper bearing 13 does not engage the outer sidewall of the housing, nor is it formed with a split segment according to the claimed invention. Furthermore, Graham does not teach an axially aligned lubrication slot as defined in Applicant's Claim 1, but rather employs a radially oriented lubrication port 11i.

Maughan teaches an all-plastic socket joint assembly. According to Maughan, a plastic lower bearing 22 is paired with a plastic upper bearing 24, such that there is no metal-to-metal sliding contact with the head end portion 40 of the metal moveable member 42. Furthermore, the annular upper bearing 24 does not include a split segment as defined in Applicant's Claim 1. Maughan does appear to disclose an axially located lubrication port 80, but such is not oriented in direct facing opposition to a flat spot on the head end portion of the moveable member 42.

Just like Maughan, Herbenar also fails to disclose an annular metal upper bearing in direct metal-to-metal sliding contact with the head end portion of a metal moveable member. Herbenar teaches a metal or high-density plastic lower bearing 21 paired with a resilient plastic upper bearing 22. The upper bearing 22 is formed with a split segment 40 as depicted in Figure 3. Herbenar goes to great lengths describing the differentiated material composition between upper 21 and lower 22 bearings. The lower bearing 21 is described at column 1, lines 66-68 as well as column 2, lines 33-36 comprising either steel or plastic. However, the upper bearing 22 is fabricated from a plastic composition. See, for example, column 5, lines 48-61. Furthermore, column 7, line 5 describes the upper bearing in this manner: "a resilient plastic split wear takeup bearing ring...". In Herbenar, the upper bearing 22 is "sacrificial" meaning that it is intended to be an abradable wear component. The relationship between the lower and upper bearings, 21, 22, together with the manner in which they are seated inside their housing 11, is specifically constructed so that the upper bearing 22 slowly wears away until repair or replacement is required.

The substantial difference between the Graham ball joint and the Herbenar ball joint appears to go unappreciated. Graham does not employ an independent lower bearing, but rather an integral, scalloped portion from the housing interior 11C. The proposed application of Herbenar's upper bearing 22 into the Graham construction completely ignores the all-important interplay between Herbenar's lower and upper bearings 21, 22 so as to provide an exterior indication when maintenance or service is needed. See, for example, Herbenar at column 2, lines 8-26:

“In all of the embodiments disclosed, means are provided limiting the amount of wear which can be taken up by the wear takeup bearing. After this time, a looseness condition will occur from further wear. This looseness or zero torque can be determined from exterior of the socket and indicates that the socket or at least the interior components thereof should be replaced. The preferred method of preventing further wear takeup as disclosed in this invention is to limit the amount of travel toward the load-carrying bearing which the wear takeup bearing can undergo. This can be controlled by a predetermined built in clearance between the wear takeup bearing and the load bearing, so that when the desired amount of wear takeup has occurred, the wear takeup bearing will bottom against the load carrying bearing. Further movement will then be prevented of the wear takeup bearing and further wear will cause a looseness of the ball-ended stud within the housing.”

It is respectfully submitted that the asserted combination of Herbenar's C-shaped split segment plastic bearing with the un-split metal upper bearing of Graham is improper and arises entirely from hindsight from the Applicant's claimed invention. A true substitution of teachings would not even result in Applicant's claimed invention as set forth in amended Claim 1. In particular, replacement of the Graham upper bearing with the plastic split bearing in Herbenar would not result in direct metal-to-metal sliding contact between the bearing and the head end portion of the moveable member. This feature is set forth in Applicant's Claim 1 and has been the highlighted feature of their invention from the very beginning.

It is respectfully submitted that the prior art simply does not teach the Applicant's claimed invention, nor does an asserted combination of the teachings render the claimed invention obvious. Rather, the current rejection based on obviousness requires a hindsight reconstruction of the prior art teachings, rather than a more natural substitution of components. In other words, it is only by remaking Herbenar's abraidable plastic wear component (i.e. the split upper bearing 22) into a non-abraidable metallic ring for use in Graham that the Examiner's

argument can be advanced. It is respectfully submitted that such a reconstruction of the prior art, which is born entirely through the Examiner's unprecedented rearrangement of prior art teachings, is impermissible. Applicant's Claim 1, as amended, sets forth with particularity subject matter which is neither shown nor suggested in the prior art, and on this basis is believed to be presented in condition for allowance.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graham et al., Maughan and Herbenar as applied to Claims 1, 2-8 and 10 above, and further in view of Kern, Jr. et al. (U.S. Patent 5,116,159).

For all of the reasons set forth above, it is respectfully submitted that the dependent claims are allowable together with base Claim 1. Furthermore, the Applicant respectfully traverses the mischaracterization of its position as found in the penultimate paragraph on page 7 of the June 20, 2008 Office Action. In that passage, the Examiner misconstrues the Applicant's position by suggesting that Claims 3-11 "stand or fall" with the patentability determination of Claim 1. This is not what the Applicant said, nor is it the Applicant's current position. Rather, for the sake of examination efficiency, the Applicant merely indicated that the rejection of Claims 3-11 was moot because their common base claim, Claim 1, is believed to be presented in condition for allowance. Such is the present situation as well.

**Concluding Remarks**

Reconsideration of this application is respectfully requested on the basis of these amendments.

It is believed that this application is now in condition for allowance, or at least in better form for appeal. Further and favorable action is requested.

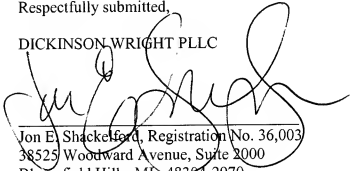
The Patent Office is authorized to charge any fee deficiency or refund any excess to Deposit Account No. 04-1061.

Respectfully submitted,

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Date: \_\_\_\_\_

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